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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STORM CATTOCHE, an individual

Plaintiff,

vs.

UNITED AIRLINES, INC., a Delaware
Corporation, STEPHANIE LOCHMANN
MCLEMANAND, an individual, ANDREW
WILLSON, an individual; and DOES 1-10,
inclusive,

Defendants.

Case No. _____

**DEFENDANT UNITED AIRLINES INC.'S
NOTICE OF REMOVAL OF CIVIL
ACTION TO THE UNITED STATES
DISTRICT COURT**

San Francisco County Superior Court
Case No.: CGC-20-588077
State Action Filed: November 13, 2020

1 TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
2 OF CALIFORNIA, THE CLERK OF COURT, AND PLAINTIFF AND HER ATTORNEYS
3 OF RECORD:

4 **PLEASE TAKE NOTICE** that Defendant United Airlines, Inc. (“Defendant” or “United”)
5 hereby removes the above-captioned action from the Superior Court of the State of California for the
6 County of San Francisco to the United States District Court for the Northern District of California
7 pursuant to 28 U.S.C. §§ 1441 and 1446, asserting original federal jurisdiction on the basis of diversity
8 under 28 U.S.C. § 1332(a)(1). Pursuant to 28 U.S.C. § 1446(d), copies of this Notice of Removal are
9 being served upon counsel for Plaintiff Storm Cattoche (“Plaintiff”), and filed with the Clerk of the
10 California Superior Court for the County of San Francisco, as an exhibit to a Notice to State Court of
11 Removal to Federal Court.

PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL

13 1. Plaintiff commenced this action against United on November 13, 2020 in the Superior
14 Court for the County of San Francisco, in the case captioned, *Cattoche v. United Airlines, Inc. et al.*,
15 Case No. CGC-20-588077 (the “State Court Action”). *See* Declaration of Michele Haydel Gehrke
16 (“Gehrke Decl.”) at ¶ 2. In the State Court Action, Plaintiff alleged four state law claims against
17 United: (1) retaliation in violation of Labor Code section 1102.5; (2) gender discrimination under
18 disparate treatment and disparate impact theories in violation of FEHA; (3) race discrimination under
19 a disparate treatment theory in violation of FEHA; and (4) hostile work environment harassment in
20 violation of FEHA and failure to prevent harassment. *See generally* Complaint (“Complaint”).
21 Gehrke Decl., ¶ 2. Plaintiff, however, never served the Complaint on United. Gehrke Decl., ¶ 2.

22 2. On December 8, 2020, Plaintiff filed a First Amended Complaint. *See generally* First
23 Amended Complaint (“FAC”). Gehrke Decl., ¶ 3. No additional claims were added against United,
24 but two claims were brought against two newly added co-defendants, Stephanie Lochmann
25 McLeran and¹ Andrew Willson: (1) retaliation in violation of Labor Code section 1102.5; and (2)
26 intentional infliction of emotional distress. Gehrke Decl., ¶ 3. United was subsequently served with

²⁷ ²⁸ ¹ United does not have an employee with this name. Karpierz Decl., ¶ 6. Defendant presumes Plaintiff is intending to sue SFO Inflight Supervisor Stephanie Lochmann MacLaren, but has failed to properly name her or serve her with the FAC. Karpierz Decl., ¶ 6.

1 the Complaint through its agent for service of process on February 8, 2021. Gehrke Decl., ¶ 4. Upon
2 information and belief, neither individual defendant has yet to be served in this Action. Gehrke Decl.,
3 ¶ 3.

4 3. To date, United has not filed an Answer to the FAC in the State Court Action. Gehrke
5 Decl., ¶ 4. On March 10, 2021, Defendant timely removed the State Court Action to this Court. Gehrke
6 Decl., ¶ 4. Copies of the Complaint and First Amended Complaint in the State Court Action are
7 attached to the Gehrke Declaration as **Exhibit A** and **Exhibit B**, respectively, and constitute all
8 processes, pleadings, and orders purported to be filed or served on Defendants in this action. Gehrke
9 Decl., ¶ 6.

0 4. A copy of the Notice to State Court of Removal to Federal Court is attached (without
1 exhibits) to the Gehrke Declaration at ¶ 6, **Exhibit C**.

NO JOINDER NECESSARY

3 5. Upon information and belief, as of the date of this filing, co-defendants Stephanie
4 Lochmann McLeranand and Andrew Willson have not been served in the State Court Action. Gehrke
5 Decl., ¶ 3. Generally, all defendants must join in or consent to removal proceedings, *except*
6 *for unserved defendants.* *Riggs v. Plaid Pantries, Inc.*, 233 F. Supp. 2d 1260, 1264 (D. Or.
7 2001) (*citing Salveson v. Western States Bankcard Ass'n*, 731 F.2d 1423, 1429 (9th Cir.
8 1984) (*overruled on other grounds by Ethridge v. Harbor House Restaurant*, 861 F.2d 1389 (9th Cir.
9 1988)) (stating that unserved defendants need not be joined)).

20 6. Consequently, the citizenship of the unserved defendants McLeranand and Willson
21 should be ignored for purposes of removal. However, upon further information and belief, co-
22 defendants McLeranand and Willson would likely consent to this removal. Gehrke Decl., ¶ 3. Because
23 there are no other ascertainable defendants in this action, no consent to removal is necessary. Gehrke
24 Decl., ¶ 3.

BASES FOR REMOVAL

26 7. This Court has original jurisdiction under 28 U.S.C. § 1332 pursuant to 28 U.S.C. §
27 1441 because it involves a controversy that exceeds the sum or value of Seventy-Five Thousand
28 Dollars (\$75,000), and because Plaintiff and Defendant are diverse. *See Morris v. Princess Cruises,*

1 *Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001) (complete diversity requirement inapplicable where “non-
2 diverse defendant has been ‘fraudulently joined.’”).

3 **DIVERSITY JURISDICTION**

4 8. “[F]ederal removal jurisdiction on the basis of diversity … is determined … as of the
5 time the complaint is filed and removal is effected.” *Strotek Corp. v. Air Transport Ass’n. of Am.*, 300
6 F.3d 1129, 1131 (9th Cir. 2002).

7 9. Courts disregard fictitious “DOE” when evaluating diversity. *Newcombe v. Adolf*
8 *Coors Co.*, 157 F.3d 686, 690 (9th Cir. 1998) (“[T]he citizenship of defendants sued under fictitious
9 names shall be disregarded for purposes of removal.”). Additionally, the FAC does not set forth the
10 identity or status of any said fictitious defendants, nor any charging allegation against any fictitious
11 defendants.

12 **The Parties Are Diverse**

13 10. As set forth below, complete diversity of citizenship exists here because the Plaintiff
14 and the only properly served Defendant in the case, United, are citizens of different states.

15 **Plaintiff’s Citizenship**

16 11. Plaintiff alleges she is an individual who at all times mentioned in the FAC was a
17 resident of the County of San Francisco, California. *See* FAC, ¶ 1.

18 12. A natural person’s citizenship is determined by her state of domicile. *Kantor v. Warner-*
19 *Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001); *Lopez v. Nationstar Mortgage LLC*, 2015 WL
20 6478263, *2 (C.D. Cal. Oct. 26, 2015) (“In the absence of evidence to the contrary, a party will be
21 treated as a citizen of its state of residence for federal diversity purposes.”). Consequently, Plaintiff is
22 domiciled in California.

23 **United’s Citizenship**

24 13. Pursuant to 28 U.S.C. § 1332(c), “a corporation shall be deemed to be a citizen of any
25 State by which it has been incorporated and of the State where it has its principal place of business.”
26 United is now, and ever since this action commenced has been, incorporated under the laws of the
27 State of Delaware, with its principal place of business in Chicago, Illinois under the “nerve center”
28 test. FAC, ¶ 3; Karpierz Decl., ¶ 2; *see also Hertz Corp. v. Friend*, 130 U.S. 1181, 1192 (2010).

1 **Unserved Defendants Stephanie Lochmann McLeranand's and Andrew Willson's**
 2 **Citizenship Should Be Ignored For Purposes of Removal**

3 14. Defendants Stephanie Lochmann McLeranand and Andrew Willson are both domiciled
 4 in the state of California. FAC, ¶¶ 4-5 Further, upon information and belief, Plaintiff has failed to
 5 serve either individual defendants since filing her FAC over three months ago on December 8, 2020.

6 15. Pursuant to 28 U.S.C. section 1441(B)(2), an action may not be removed if “if any of
 7 the parties in interest **properly joined and served** as defendants is a citizen of the State in which such
 8 action is brought.” (emphasis added). *In Molina v. JP Morgan Chase Bank*, 2011 U.S. Dist. 28285,
 9 *3 fn. 3 (N.D. Cal. March 7, 2011), the Northern District court explicitly stated that “[b]ecause the
 10 other Defendants identified by Plaintiff were not served in the state court action, [the served
 11 defendants] were not required to seek their joinder in removal.” (*citing Salveson*, 731 F.2d at 1429).
 12 Meanwhile, the court in *Colorado Seasons, Inc. v. Friedenthal*, 2020 U.S. Dist. LEXIS 84645, *5-11
 13 (C.D. Cal. May 13, 2020), elaborated further regarding removal actions in the context of when certain
 14 parties have not yet been “properly joined and served.” There, the court ruled that, “in light of the text
 15 of § 1441(b)(2) and the cases that have interpreted it, § 1441(b)(2) **does not preclude the removal of**
 16 **an action in which a forum defendant has been named in the complaint, but has not yet "properly**
 17 **joined and served."** *Id.* at *11 (emphasis added). In fact, “a contrary interpretation would, in effect,
 18 either read ‘served’ out of the statute or read into it a requirement of a fact-intensive inquiry to
 19 determine whether there was a reasonable opportunity for service of the unserved defendant prior to
 20 removal.” *Id.* As such, the court denied the plaintiff’s motion for remand and held that omitting the
 21 unserved defendants’ citizenship for purposes of removal was proper.

22 16. Courts in other districts have likewise held that unserved defendants should be ignored
 23 for purposes of removal. *See, e.g., Tex. Brine Co. v. Am. Arbitration Ass’n*, 955 F.3d 482, 487 (5th
 24 Cir. 2020); *Gibbons v. Bristol Myers Squibb Co.*, 919 F.3d 699, 706-07 (2d Cir. 2019); *Encompass*
 25 *Ins. Co. v. Stone Mansion Rest. Inc.*, 902 F.3d 147, 153-54 (3d Cir. 2018). In fact, one district court
 26 has further explained the “unserved defendant” exception by holding that

27 28 [J]oinder in or consent to the removal petition must be accomplished by only those
 defendants: (1) who have been served; and, (2) whom the removing defendant(s)
 actually knew or should have known had been served. The second requirement

1 encompasses the served defendants whom the removing defendant(s) actually knew
 2 had been served. This requirement also mandates that the removing defendant(s) obtain
 3 the consent or joinder of the other defendant(s) whom the removing defendant(s)
 4 should have been aware of because of the constructive notice of the filing of the return
 5 of service in the state court. The constructive notice element should only be applied to
 6 removing defendants who had a reasonable time to become aware of the filing of such
 7 service and had a reasonable time in which to obtain the consent or joinder of such
 8 other defendants. *Milstead Supply Co. v. Casualty Ins. Co.*, 797 F. Supp. 569, 573
 9 (W.D. Tex. 1992).

10 17. Similar to *Molina* and *Colorado Seasons*, removal here based on diversity is
 11 appropriate because United – the only “properly joined and served” defendant – is not a citizen of
 12 California.

13 **Alternatively, The Court Must Disregard the Citizenship of McLeranand and Willson
 14 Because They Are Fraudulently Joined**

15 18. As a separate basis, removal is also proper because the individual defendants were
 16 fraudulently joined. Although complete diversity is required under section 1332, district courts may
 17 ignore the fraudulent joinder of non-diverse defendants in determining whether diversity jurisdiction
 18 exists. *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1043 (9th Cir. 2009) (“[O]ne exception to the
 19 requirement for complete diversity is where a non-diverse defendant has been fraudulently joined”).
 20 A defendant’s right of removal cannot be defeated by fraudulent joinder of a non-diverse defendant.
 21 *See Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998) (“It is a commonplace that
 22 fraudulently joined defendants will not defeat removal on diversity grounds.”). Where a plaintiff
 23 clearly fails to state a cause of action against a resident defendant, joinder of the resident defendant is
 24 fraudulent. *Id.*

25 19. Joinder is fraudulent “if the plaintiff fails to state a claim against a resident defendant,
 26 and the failure is obvious according to the settled rules of the state.... In such a case, the district court
 27 may ignore the presence of that defendant for the purpose of establishing diversity.” *Hunter*, 582 F.3d
 28 at 1043. Determining whether a plaintiff sufficiently stated a claim against a resident defendant,
 29 however, is “constrained to the facts actually alleged [in the complaint]; it does not extend to facts or
 30 causes of action that *could* be alleged via an amended complaint.” *Kruso v. Int’l Tel. & Tel. Corp.*, 872
 31 F.2d 1416, 1426 n.12 (9th Cir. 1989) (affirming district court’s refusal to consider allegations made in
 32 plaintiffs’ unfiled, proposed amended complaint submitted as an attachment to a motion for

1 reconsideration to determine whether valid claims had been stated for fraudulent joinder purposes).

2 **Plaintiff's Labor Code Section 1102.5 Claim**

3 20. Courts have routinely held that non-employer individuals are not personally liable for
 4 retaliation. *See Jones v. Lodge at Torrey Pines Partnership*, 42 Cal.4th 1158, 1173-74 (2008). The
 5 bar on holding individuals liable for retaliation does not change simply because Plaintiff brings a
 6 retaliation claim against the individual defendants under California Labor Code section 1102.5. As
 7 the court in *Gonzalez v. Trojan Battery Co., LLC*, 2020 WL 2857487, *5-6 (C.D. Cal. June 2, 2020)
 8 recently explained,

9 [T]he vast majority of the California Labor Code claims ostensibly plead against
 10 Marquez simply do not create liability against a non-employer individual like
 11 Marquez. See Cal. Lab. Code §§ 226.7, 512(a), 1194, 1197, 1197.1, 201, 202, 204,
 12 226(a), 1174(d), 2800, 2802 (creating liability against employers for violations of the
 13 statutes Plaintiff has alleged have been violated). ***Additionally, the language of Cal.***
Lab. Code § 1102.5, while broader than that contained in the statutes above, has
consistently been construed by district courts in the Ninth Circuit to preclude
individual liability by a manager or other nonemployer. *See CTC Glob. Corp. v.*
Huang, 2018 U.S. Dist. LEXIS 222528, 2018 WL 4849715, at *4 (C.D. Cal. Mar. 19,
 14 2018) ("Like the relevant statutes in Reno and Jones, it appears the California
 15 legislature intended simply to extend an employer's liability, rather than to create a
 16 new category (supervisors) of potential defendants"); *Tillery v. Lollis*, 2015 U.S. Dist.
 17 LEXIS 106845, 2015 WL 4873111, at *8-10 (E.D. Cal. Aug. 13, 2015); *United States*
ex rel. Lupo v. Quality Assurance Servs., Inc., 242 F. Supp. 3d 1020, 1030 (S.D. Cal.
 2017).

18 21. Because California law does not support individual liability for alleged whistleblower
 19 retaliation under Labor Code section 1102.5, the individual defendants are sham defendants and should
 20 be ignored for removal purposes.

21 **Plaintiff's IIED Claim**

22 22. Plaintiff's newly added fifth cause of action for IIED against the individual defendants
 23 is similarly deficient for failure to allege facts to state her claim. To "state a cause of action for
 24 intentional infliction of emotional distress a plaintiff must show: (1) outrageous conduct by the
 25 defendant; (2) the defendant's intention of causing or reckless disregard of the probability of causing
 26 emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and
 27 proximate causation of the emotional distress by the defendant's outrageous conduct." *Yau v. Santa*
Margarita Ford, Inc., 229 Cal. App. 4th 144, 160 (2014).

1 23. Importantly, termination, discipline, and criticism in the normal course of the
 2 employment relationship do not constitute outrageous conduct. *See e.g., Lawler v. Montblanc N. Am.,*
 3 *LLC*, 704 F. 3d 1235, 1245-46 (9th Cir. 2013) (applying California law and finding that criticisms not
 4 outrageous even when given in gruff and intimidating manner because related to business operations
 5 and employee’s performance); *Buscemi v. McDonnell Douglas Corp.*, 736 F. 2d 1348, 1352 (9th Cir.
 6 1984) (applying California law and finding that termination not outrageous even when done in “callous
 7 and insensitive” manner); *Shoemaker v. Myers*, 52 Cal. 3d 1, 25 (1990) (discipline not outrageous even
 8 when supervisor said he wanted to cause “as much grief as possible” to plaintiff); *Trerice v. Blue Cross*
 9 *of California*, 209 Cal. App. 3d 878, 884-885 (1989) (termination, even where plaintiff “was
 10 undoubtedly distressed by the awkward way in which her termination was handled,” insufficient to
 11 state a claim for IIED).

12 24. Further, individually named defendants are not liable for IIED for routine personnel
 13 management decisions. *See, e.g., Zhang v. Walgreen Co.*, 2010 WL 4174635, *3 (N.D. Cal. Oct. 20,
 14 2010) (“Managing personnel is not outrageous conduct beyond the bounds of human decency. . . .
 15 [S]imply pleading personnel management activity is insufficient to support an IIED claim, even if the
 16 plaintiff alleges that such activity was improperly motivated. Rather, if personnel management
 17 decisions are improperly motivated, the remedy is a suit against the employer for discrimination.”).

18 25. Here, Plaintiff alleges that she sent an email to the individual defendants on January
 19 11, 2020, raising concerns about material changes to the terms and conditions of International Purfers’
 20 employment. FAC, ¶ 14. Further, Plaintiff alleges that she “respectfully declined” to attend a
 21 “mandatory Purser meeting” scheduled by United management. FAC, ¶¶ 16-17. As a result, the
 22 following day, Plaintiff allegedly received a performance evaluation and a demotion from the position
 23 of International Purser. FAC, ¶ 18. Such limited allegations cannot give rise to a claim for IIED. In
 24 fact, the bar for an IIED claim is high and Plaintiff’s FAC is deficient in alleging even the most basic
 25 underlying facts to state her claim. “In evaluating whether the defendant’s conduct was outrageous, it
 26 is not enough that the defendant has acted with an intent which is tortious or even criminal, or that he
 27 has intended to inflict emotional distress, or even that his conduct has been characterized by malice,
 28 or a degree of aggravation which would entitle the plaintiff to punitive damages for another tort.

1 Liability has been found only where the conduct has been so outrageous in character, and so extreme
 2 in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly
 3 intolerable in a civilized community.” *Cochran v. Cochran*, 65 Cal. App. 4th 488, 496 (1998) (quoting
 4 Rest. 2d Torts § 46, com. D.).

5 26. Moreover, as to the individually named Defendants, Plaintiff offers no facts that
 6 constitute outrageous or extreme conduct on the part of Mr. Willson or Ms. McLerenand. In fact,
 7 there are no allegations whatsoever against either Mr. Willson or Ms. McLerenand.² Notably, Plaintiff
 8 does allege that United “stopp[ed] Ms. Cattoche from performing her duties, calling her in for non-
 9 random testing in front of her co-employees and customers, and engaging in hyper-scrutiny of her
 10 attire and performance.” FAC, ¶ 23. Plaintiff, however, fails to provide any details regarding who
 11 performed these alleged actions or when these alleged actions took place.

12 27. Finally, Plaintiff’s IIED claim is barred by workers’ compensation exclusivity because
 13 Plaintiff alleges that any purported injury occurred within the context of the employment relationship.
 14 *See e.g. Erhart v. BofI Holding, Inc.*, 269 F. Supp. 3d 1059, 1080–81 (S.D. Cal. 2017) (California’s
 15 Workers’ Compensation Act provides an employee’s exclusive remedy against his or her employer
 16 for injuries arising out of and in the course of employment....Claims for intentional infliction of
 17 emotional distress are not excluded....These claims fall within the exclusive province of workers’
 18 compensation so long as the conduct occurred at the worksite, in the normal course of the employer-
 19 employee relationship.). As such, Plaintiff’s IIED allegations against the individual defendants must
 20 be ignored for removal purposes.

21 **Amount in Controversy Exceeds \$75,000**

22 28. When courts “assess the amount in controversy [they] ... include all relief to which a
 23 plaintiff is entitled if the action succeeds.” *Fritsch v. Swift Trans. Co. of Arizona, LLC*, 899 F.3d 785,
 24 794 (9th Cir. 2018). In determining whether the amount in controversy exceeds \$75,000, the Court
 25 must presume Plaintiff will prevail on all of her claims. *See Kenneth Rothschild Trust v. Morgan*

26
 27 2 Paragraph 18 of the FAC mentions that a “Ms. Maclare” provided Plaintiff with a performance
 28 evaluation and demoted her from the position of the International Purser. Even if Ms. Maclare is
 the same person as Ms. McLerenand, such an allegation is still simply a routine personnel
 management action that cannot form the basis of an IIED claim.

1 *Stanley Dean Witter*, 199 F. Supp. 993, 1001 (C.D. Cal. 2002) (“a court must assume . . . a jury will
 2 return a verdict for the plaintiff on all claims made in the complaint”). Further, “a defendant’s notice
 3 of removal need include only a plausible allegation that the amount in controversy exceeds the
 4 jurisdictional threshold; the notice need not contain evidentiary submission.” *Dart Cherokee Basin
 5 Operating Co., LLC v. Owens*, 574 U.S. 81, 81 (2014).

6 29. In evaluating the amount in controversy where a plaintiff seeks unpaid wages, courts
 7 consider past and “future wages . . . whatever the likelihood that she will actually recover them.”
 8 *Tipton v. Airport Terminal Servs.*, 2019 WL 185687, *9 (C.D. Cal. Jan. 14, 2019); *Woods v. Hertz
 9 Corp.*, 2018 U.S. Dist. LEXIS 43759 (C.D. Cal. March 15, 2018) (holding that defendant’s burden in
 10 establishing the minimum amount in controversy was met by alleging \$22,272 in lost wages, coupled
 11 with plaintiff’s emotional distress and punitive damage claims). In evaluating the appropriate period
 12 of time for calculating future wages, “sixteen months from the date of removal is [] appropriate[.]”
 13 *Tipton*, 2019 WL 185687, *8; *see also Fisher v. HNTB Corp.*, 2018 WL 6323077, *5 (C.D. Cal. Dec.
 14 3, 2018) (“Defendants’ proposed date of trial for purposes of [removal] – one year from the date of
 15 removal – is a conservative estimate of the trial date.”). Here, the Court can reasonably ascertain from
 16 Plaintiff’s FAC and her prayer for relief that the amount in controversy exceeds \$75,000.

17 30. Plaintiff alleges she was wrongfully removed from the purser program in retaliation for
 18 “whistleblower” complaints in violation of California Labor Code section 1102.5. *See generally* FAC,
 19 ¶¶ 29-42. Plaintiff also brings claims for gender discrimination, race discrimination, hostile workplace
 20 harassment, failure to prevent harassment, and IIED. *See generally* FAC, ¶¶ 43-78. Plaintiff
 21 specifically seeks economic damages in the form of past and future income and employment benefits,
 22 non-economic damages as a result of emotional distress, punitive and exemplary damages, interest on
 23 Plaintiff’s alleged damages, and costs and attorneys’ fees. *See* FAC, Prayer for Relief. Courts include
 24 each of these categories of damages in evaluating the amount in controversy. *See, e.g., Kroske v. US
 25 Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005); *Simmons v. PCR Technology*, 209 F. Supp. 2d 1029,
 26 1034 (N.D. Cal. 2002) (“[E]motional distress damages may be considered when calculating the
 27 amount in controversy even where not clearly pled in the complaint.”); *Ramirez v. Little Caesars
 28 Enterprises, Inc.*, 2018 WL 5816107, *10 (C.D. Cal. Nov. 2, 2018)(court includes benefits in

1 evaluating amount in controversy).

2 31. Plaintiff commenced her employment as a Flight Attendant at United in February 1989.
 3 FAC, ¶ 9. Over the years, she eventually retained the position of International Purser. FAC, ¶ 10. As
 4 an International Purser, Plaintiff received a premium payment of \$7.50 per flight hour for any
 5 assignment in which she served as a Purser. Karpierz Decl., ¶ 4. On or about January 14, 2020,
 6 however, United removed Plaintiff from the International Purser program, at which time her position
 7 reverted back to that of a Flight Attendant. FAC, ¶ 18; Karpierz Decl. ¶ 4. Consequently, beginning
 8 February 2020, Plaintiff no longer received a \$7.50 premium for each flight hour worked. Karpierz
 9 Decl. ¶ 4.

10 32. After her demotion to Flight Attendant, Plaintiff worked approximately 298 hours and
 11 30 minutes from February 2020 through the end of the year.³ Karpierz Decl. ¶ 4. Had Plaintiff not
 12 been removed as a Purser, United estimates that Plaintiff would have received at least an additional
 13 \$7.50 per hour for the 298 hours and 30 minutes she worked. Karpierz Decl. ¶ 4. This comes out to
 14 a total of \$2,238.75 in lost wages (298.5 flight hours multiplied by \$7.50 premium payment) in 2020
 15 as a result of her demotion. Karpierz Decl. ¶ 4.

16 33. Because Plaintiff seeks “loss of earnings,” to the extent Plaintiff seeks future damages
 17 or front pay, such front pay awards in California span several years. *See e.g. Smith v. Brown-Forman*
 18 *Distillers Corp.*, 196 Cal. App. 3d 503, 518 (1989) (front pay until mandatory retirement age reached
 19 which was four years); *Drzewiecki v. H & R Block, Inc.*, 24 Cal. App. 3d 695, 705 (1972) (ten years).
 20 This front pay would include the Purser pay differential. In 2019 (the last full year Plaintiff worked
 21 as a Purser), Plaintiff had a flying time of 1,095 hours and 22 minutes. Karpierz Decl. ¶ 5. United
 22 estimates that had Plaintiff continued as an International Purser, she would have similarly worked
 23 approximately 1,095 hours and 22 minutes in both 2021 and 2022. Karpierz Decl. ¶ 5. As such,
 24 Plaintiff’s lost front-pay wages, assuming she is entitled to at least 2 years of lost wages, totals
 25 approximately \$8,215.25 in 2021 and \$8,215.25 in 2020. Karpierz Decl. ¶ 5. Assuming a front-pay
 26 award of two years from the trial date, Plaintiff’s purported front-pay award would be \$16,430.50.

27
 28 ³ Plaintiff’s flight hours for 2020 were substantially lower than prior years because Plaintiff went on a leave of absence at
 various times throughout 2020. Karpierz Decl. ¶ 4.

1 Karpierz Decl. ¶ 5. Thus, Plaintiff's lost wages total at least approximately \$18,669.25. Karpierz
 2 Decl. ¶ 5.

3 34. Plaintiff further seeks to recover emotional distress damages. FAC, ¶¶ 42, 51, 61, 68,
 4 Prayer for Relief. Emotional distress damages are considered for the amount in controversy. *See*
 5 *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005) ("district court properly considered . . .
 6 emotional distress damage awards in similar age discrimination cases. . ."). Emotional distress
 7 damages in California discrimination cases can also be sizeable. *See e.g. Ramirez v. Little Caesars*
 8 *Enterprises, Inc.*, 2018 WL 5816107, *11 (C.D. Cal. Nov. 2, 2018) ("emotional distress damages
 9 ranged from \$500,000 to \$2.5 million"). United denies that emotional distress damages should be
 10 awarded here; however, for purposes of the amount in controversy requirement, these claimed
 11 damages should be considered and in of itself exceeds the amount of controversy requirement.

12 35. The FAC also seeks punitive damages. *See* FAC, ¶ 69, Prayer for Relief. Punitive
 13 damages are considered part of the amount in controversy. *See Simmons*, 209 F. Supp. 2d at 1033
 14 ("[t]he amount in controversy may include punitive damages when they are recoverable as a matter of
 15 law"). "Punitive damages are available under FEHA." *Id.* Defendants deny that punitive damages
 16 should be awarded here; however, for purposes of the amount in controversy requirement, claimed
 17 punitive damages should be considered.

18 36. The FAC also seeks an award of attorneys' fees. *See* FAC, Prayer for Relief. "[A] court
 19 must include future attorneys' fees recoverable by statute or contract when assessing whether the
 20 amount-in-controversy requirement is met." *Fritsch*, 899 F.3d at 794. "Attorneys' fees are
 21 recoverable as a matter of right to the prevailing party under FEHA." *Id.* At least one California
 22 District Court "determined that an appropriate and conservative estimate for attorneys' fees in
 23 employment cases in this district may reasonably be expected to equal at least \$30,000." *Ramirez*,
 24 2018 WL 5816107, *10 ("includ[ing] \$30,000 of attorneys' fees in the amount in controversy").
 25 Defendants deny that any attorneys' fees should be awarded here; however, for purposes of the amount
 26 in controversy requirement, claimed attorneys' fees should be considered.

27 37. While Defendant denies any liability in connection with Plaintiff's claims, because
 28 diversity of citizenship exists and the amount in controversy exceeds \$75,000, this Court has original

1 jurisdiction of the action pursuant to 28 U.S.C. §1332(a). Gehrke Decl., ¶ 5. *See Woods*, 2018 U.S.
2 Dist. LEXIS 43759, *8-11. (holding that defendant's burden in establishing the minimum amount in
3 controversy was met by alleging \$22,272 in lost wages, coupled with plaintiff's emotional distress and
4 punitive damage claims).

5 **VENUE**

6 38. The State Court Action is being removed from the Superior Court of the State of
7 California, County of San Francisco. *See generally* FAC. As such, venue lies in the Northern District
8 of this Court pursuant to 28 U.S.C. §§1441 and 1446(a) as the judicial district embracing the place
9 where the State Court Action was brought and is pending.

10 **TIMELINESS OF REMOVAL**

11 39. This Notice of Removal is timely because Defendants have removed within 30 days of
12 service. 28 U.S.C. § 1446(b).

13 **CONCLUSION**

14 WHEREFORE, Defendants give notice that the State Court Action pending against it in the
15 Superior Court of the State of California for the County of San Francisco is removed to this Court.

17 DATED: March 10, 2021

18 REED SMITH LLP

20 By: /s/ Michele Haydel Gehrke
21 Michele Haydel Gehrke
22 Kourosh Jahansouz
23 Attorneys for Defendant
24 UNITED AIRLINES, INC.

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